

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF PUERTO RICO

3 UNITED STATES OF AMERICA,

4 Plaintiff

5 v.

CRIMINAL 05-0195 (JAG)

6 [8] BRENDA RÍOS-PÉREZ,

7 Defendant

9
10 MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION
11 RE: RULE 11(c)(1)(B) PROCEEDINGS (PLEA OF GUILTY)

12 I. Personal Background

13 On June 2, 2005, Brenda Ríos-Pérez, the defendant herein, was charged in a
14 two-count indictment. The defendant agrees to plea guilty to count one of the
15 indictment.

16 Count one charges that the defendant conspired with others and with divers
17 other persons known and unknown to the Grand Jury, to knowingly and
18 intentionally possess with the intent to distribute 50 grams or more of a mixture or
19 substance containing a detectable amount of cocaine base, a Schedule II Narcotic
20 Drug Controlled Substance. All in violation of 21 U.S.C. §§ 841(a)(1) (b)(1)(A)(iii)
21 and 846.

22 Defendant filed a motion for change of plea on April 11, 2006.

23 II. Consent to Proceed Before a Magistrate Judge

24 Today, while assisted by Olga M. Shepard de Mari, Esq., the defendant, by
25 consent, appeared before me in order to change her previous not guilty plea to a plea
26 of guilty as to count one of the indictment.

27 In open court the defendant was questioned as to the purpose of the hearing
28 being held. The defendant responded that the purpose of the hearing was to plead

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3 guilty. The defendant was advised of her right to have all proceedings, including the
4 change of plea hearing, before a United States district judge. Defendant was given
5 notice of: (a) the nature and purpose of the hearing; (b) the fact that all inquiries
6 were to be conducted under oath and that it was expected that her answers would
7 be truthful (she was also explained that the consequences of lying under oath could
8 lead to a perjury charge); and (c) her right to have the change of plea proceedings
9 presided over by a district judge instead of a magistrate judge. The defendant was
10 also explained the differences between the appointment and functions of the two.
11 The defendant consent to proceed before this magistrate judge.

12 III. Proceedings Under Rule 11, Federal Rules of Criminal Procedure

13 A. Compliance With Requirements Rule 11(c)(1)

14 Rule 11 of the Federal Rules of Criminal Procedure governs the
15 acceptance of guilty pleas to federal criminal violations. Pursuant to
16 Rule 11, in order for a plea of guilty to constitute a valid waiver of the
17 defendant's right to trial, guilty pleas must be knowing and voluntary:
18 "Rule 11 was intended to ensure that a defendant who pleads guilty
19 does so with an 'understanding of the nature of the charge and
20 consequences of his plea.'" United States v. Cotal-Crespo, 47 F.3d 1, 4
(1st Cir. 1995) (quoting McCarthy v. United States, 394 U.S. 459, 467
(1969)). [There are three core concerns in these proceedings]: 1)
2) absence of coercion; 2) understanding of the charges; and 3) knowledge
of the consequences of the guilty plea. United States v. Cotal-Crespo, 47
F.3d at 4 (citing United States v. Allard, 926 F.2d 1237, 1244-45 (1st
Cir. 1991)).

21 United States v. Hernández-Wilson, 186 F.3d 1, 5 (1st Cir. 1999).

22 In response to further questioning, defendant was explained and she
23 understood that if convicted on count one, she was exposed to a term of
24 imprisonment of not less than five years and not more than 40 years, a fine of not
25 to exceed \$2,000,000, and a term of supervised release of at least four years in
26 addition to any term of incarceration. The court must impose a mandatory penalty
27 assessment of \$100, to be deposited in the Crime Victim Fund, pursuant 18 U.S.C.
28 3013(a).

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3 Defendant was advised that the ultimate sentence was a matter solely for the
4 court to decide in its discretion and that, even if the maximum imprisonment term
5 and fine were to be imposed upon her, she later could not withdraw her guilty plea
6 if she was unhappy with the sentence of the court. The defendant understood this.

7 Defendant was explained what the supervised release term means. It was
8 emphasized that cooperation with the United States Probation officer would assist
9 the court in reaching a fair sentence.

10 Emphasis was made on the fact that at this stage, no prediction or promises
11 as to the sentence to be imposed could be made by anyone. Defendant responded to
12 questions in that no promises, threats, inducements or predictions as to what
13 sentence will be imposed have been made to her.

14 B. Admonishment of Constitutional Rights

15 To assure defendant's understanding and awareness of her rights, defendant
16 was advised of her right:

17 1. To remain silent at trial and be presumed innocent, since it is the
18 government who has the burden of proving her guilt beyond a reasonable doubt.

19 2. To testify or not to testify at trial, and that no comment could be made by
20 the prosecution in relation to her decision not to testify.

21 3. To a speedy trial before a district judge and a jury, at which she would be
22 entitled to see and cross examine the government witnesses, present evidence on her
23 behalf, and challenge the government's evidence.

24 4. To have a unanimous verdict rendered by a jury of twelve persons which
25 would have to be convinced of defendant's guilt beyond a reasonable doubt by means
26 of competent evidence.

27 5. To use the subpoena power of the court to compel the attendance of
28 witnesses.

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3 Upon listening to the defendant's responses, observing her demeanor and her
4 speaking with her attorney, that to the best of counsel's belief defendant had fully
5 understood her rights, it is determined that defendant is aware of her constitutional
6 rights.

7 C. Consequences of Pleading Guilty

8 Upon advising defendant of her constitutional rights, she was further advised
9 of the consequences of pleading guilty. Specifically, defendant was advised that by
10 pleading guilty and upon having her guilty plea accepted by the court, she will be
11 giving up the above rights and would be convicted solely on her statement that she
12 is guilty.

13 Furthermore, the defendant was admonished of the fact that by pleading guilty
14 she would not be allowed later on to withdraw her plea because she eventually might
15 disagree with the sentence imposed, and that when she were under supervised
16 release, and upon violating the conditions of such release, that privilege could be
17 revoked and she could be required to serve an additional term of imprisonment. She
18 was also explained that parole has been abolished.

19 D. Plea Agreement

20 The parties have entered into a written plea and that, upon being signed by the
21 government, defense attorney and defendant, was filed and made part of the record.
22 Defendant was clearly warned and recognized having understood that:

- 23 1. The plea agreement is not binding upon the sentencing court.
24 2. The plea agreement is an "agreement" between the defendant, defense
25 attorney and the attorney for the government which is presented as a
26 recommendation to the court in regards to the applicable sentencing adjustments
27 and guidelines, which are advisory.

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3 3. The agreement provides a sentencing recommendation and/or anticipated
4 sentencing guideline computation, that can be either accepted or rejected by the
5 sentencing court.

6 4. In spite of the plea agreement and any sentencing recommendation
7 contained therein, the sentencing court retains full discretion to reject such plea
8 agreement and impose any sentence up to the possible maximum penalty prescribed
9 by statute.

10 Defendant acknowledged having understood this explanation.

11 E. Government's Evidence (Basis in Fact)

12 The government presented a proffer of its evidence with which the defendant
13 concurred.

14 Accordingly, it is determined that there is a basis in fact and evidence to
15 establish all elements of the offense charged.

16 F. Voluntariness

17 The defendant accepted that no leniency had been promised, no threats had
18 been made to induce her to plead guilty and that she did not feel pressured to plead
19 guilty. She came to the hearing for the purpose of pleading guilty and listened
20 attentively as the prosecutor outlined the facts which it would prove if the case had
21 proceeded to trial.

22 IV. Conclusion

23 The defendant, by consent, has appeared before me pursuant to Rule 11,
24 Federal Rules of Criminal Procedure, and has entered a plea of guilty as to count one
25 of the indictment.

26 After cautioning and examining the defendant under oath and in open court,
27 concerning each of the subject matters mentioned in Rule 11, as described in the
28 preceding sections, I find that the defendant Brenda Ríos-Pérez is competent to enter

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3 this guilty plea, is aware of the nature of the offense charged and the maximum
4 statutory penalties that the same carries, understands that the charge is supported
5 by the government's evidence, has admitted to every element of the offense charged,
6 and has done so in an intelligent and voluntary manner with full knowledge of the
7 consequences of her guilty plea.

8 Therefore, I recommend that the court accept the guilty plea of the defendant
9 and that the defendant be adjudged guilty as to count one of the indictment. At
10 sentencing, the government will request the dismissal of the remaining count
11 pending against defendant.

12 This report and recommendation is filed pursuant to 28 U.S.C. § 636(b)(1)(B)
13 and Rule 72(d) of the Local Rules of Court. Any objections to the same must be
14 specific and must be filed with the Clerk of Court within five (5) days of its receipt.
15 Rule 510.1, Local Rules of Court; Fed. R. Civ. P. 72(b). Failure to timely file specific
16 objections to the report and recommendation is a waiver of the right to review by the
17 district court. United States v. Valencia-Copete, 792 F.2d 4 (1st Cir. 1986).

18 At San Juan, Puerto Rico, this 20th day of April, 2006.

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20 S/ JUSTO ARENAS
Chief United States Magistrate Judge

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